

1 with Miss Cook, did she say anything to you  
2 about the Commission's ex parte rules?

3 A No, she did not.

4 Q At any time during the conversation  
5 with Miss Cook, did she say anything to you  
6 about the applicability of the ex parte rules  
7 to the conversation you were having?

8 A No, she did not.

9 Q At any time during the conversation  
10 with Miss Cook --

11 (Whereupon, Mr. Bruce Eisen  
12 entered the room.)

13 BY MR. COLE:

14 Q -- did she say anything to you which  
15 you understood to relate either to the  
16 Commission's ex parte rules or to the  
17 applicability of those rules to the  
18 conversation you were having?

19 A No, she did not.

20 BY MR. COLE:

21 Q At any time during your conversation  
22 with Miss Cook, did you say anything to her

1 about the Commission's ex parte rules?

2 A No, I did not.

3 Q Okay. At any time during your  
4 conversation with Miss Cook, did you say  
5 anything to her about the applicability of the  
6 ex parte rules to your conversation?

7 A No. The subject did not come up  
8 during my conversation.

9 Q All right.

10 Now, let's go to the Margot Polivy  
11 telephone call. That was a telephone call; is  
12 that correct?

13 A Yes.

14 Q And did you receive that, or did you  
15 place that call?

16 A No, I received the call.

17 Q At any time during that call, did  
18 Miss Polivy say anything to you about the  
19 Commission's ex parte rule?

20 A I don't recall any conversation with  
21 respect to that.

22 Q At any time during the call with Miss

1 Polivy, did she say anything to you about the  
2 applicability of the ex parte rules to the  
3 conversation you were having?

4 A No. I don't recall any discussion of  
5 that with respect to the ex parte rules.

6 Q At any time during your conversation  
7 with Miss Polivy, the telephone conversation,  
8 did she say anything which you understood to  
9 relate either to the Commission's ex parte  
10 rules or to the applicability of those rules to  
11 the communication which was taking place?

12 A No. I don't recall any conversation  
13 with respect to that.

14 Q At any time during your conversation  
15 with Miss Polivy, did you say anything to her  
16 about the Commission's ex parte rules?

17 A No.

18 Q And at any time during your  
19 conversation with Miss Polivy, did you say  
20 anything to her about the applicability of the  
21 ex parte rules to the conversation you were  
22 having?

1           A     No, I did not.

2           Q     Okay. Now, am I correct that the  
3     only other communication you recall is the end  
4     of June, early July meeting?

5           A     Yes. There was a meeting in my  
6     office.

7           Q     Do you recall who attended that  
8     meeting on behalf of RBC?

9           A     Margot was there, and there was  
10    somebody with her, who I subsequently found out  
11    was a principal, I think, of the -- of Rainbow.

12          Q     Would that have been Joseph Rey? Do  
13    you recall?

14          A     I wouldn't remember his name.

15          Q     At any time during the meeting -- and  
16    I think counsel will all stipulate that that  
17    meeting occurred on July 1, 1993, from as best  
18    as we can reconstruct, and I'll refer to it as  
19    the July 1 meeting, just for convenience's  
20    sake.

21                   At any time during that meeting, did  
22    Miss Polivy or her client say anything about

1 the Commission's ex parte rules?

2 A No.

3 Q At any time during the July 1  
4 meeting, did Miss Polivy or her client say  
5 anything about the applicability of the ex  
6 parte rules to the meeting that was being held?

7 A No.

8 Q At any time during the July 1  
9 meeting, did Miss Polivy or her client say  
10 anything which you understood to relate in any  
11 way to the Commission's ex parte rules or to  
12 the applicability of the ex parte rules to the  
13 meeting that you were having?

14 A No.

15 Q At any time during the July 1  
16 meeting, did you say anything to Miss Polivy or  
17 to her client concerning the Commission's ex  
18 parte rules?

19 A No.

20 Q And at any time during the July 1  
21 meeting, did you say anything to Miss Polivy or  
22 her client about the applicability of the ex

1       parte rules to the meeting that was being held?

2           A       No.

3           Q       Would it be accurate to state, Mr.  
4       Stewart, that at no time in any oral  
5       communicat2on between you and anyone acting on  
6       behalf of RBC did either you or the person or  
7       persons with whom you were communicating say  
8       anything about the ex parte rules?

9           A       To the best of my recollection, the  
10       answer is no.

11               MR. DZIEDZIC: Perhaps you could --

12               BY MR. COLE:

13           Q       Let me repeat the question.

14               The question was, is it accurate to  
15       state that at no time in any oral communication  
16       did the topic of ex parte come up?

17           A       That's correct.

18           Q       Is it also accurate to state that at  
19       no time in any oral communication between you  
20       and anyone acting on behalf of RBC did either  
21       you or the person or persons with whom you were  
22       communicating, say anything about the

1 applicability of the ex parte rules to the  
2 communication that was taking place?

3 A That's correct.

4 Q And finally, is it also accurate to  
5 state that at no time in any oral communication  
6 between you and anyone acting on behalf of RBC,  
7 did the person or persons with whom you were  
8 communicating say anything which you understood  
9 to relate in any way to the ex parte rules or  
10 to the applicability of the ex parte rules to  
11 the communication which was taking place?

12 A That's correct.

13 MR. COLE: Fine.

14 I have no further questions.

15 EXAMINATION BY COUNSEL FOR RAINBOW

16 BROADCASTING, LIMITED

17 BY MS. POLIVY:

18 Q Mr. Stewart, I'm Margot Polivy.

19 A Hi, Margot.

20 Q Nice to see you. I only have a few  
21 questions.

22 Other than the July 1 meeting

1        regarding the Rainbow application and the  
2        telephone call that you referred to --

3            A        Which call? The Toni Cook call or --

4            Q        No, the call from me.

5            A        Okay.

6            Q        Do you recall any other discussion  
7        that you had with me or with any other Rainbow  
8        principal regarding the Rainbow applications?

9            A        No.

10          Q        Other than the call that you referred  
11        to naming Toni Cook, do you recall any other  
12        discussions with her regarding the Rainbow  
13        application?

14          A        No.

15          Q        Setting the meeting aside, in any  
16        telephone call that you had with me or any  
17        representative of Rainbow, did you express at  
18        any time a concern that there was an ex parte  
19        violation?

20          A        Did I express it to anybody?

21          Q        No, to me.

22          A        No.



1 Q Or to any representative of Rainbow.

2 A The subject did not come up in any  
3 conversation that I had with you or any  
4 representative of Rainbow.

5 Q Would the same be true with respect  
6 to any conversations you had with Toni Cook?

7 A That's correct, yes.

8 Q And would the same be true regarding  
9 the meeting as to Rainbow or its counsel?  
10 Would you like me --

11 A That's correct. We did not discuss  
12 whether or not there would be an ex parte  
13 violation.

14 Q Then or subsequently?

15 A There was no subsequent discussion  
16 except the meeting in my office, and it did not  
17 come up there.

18 Q At the time of the meeting in your  
19 office, were you aware that the Rainbow  
20 applications were contested?

21 MR. DZIEDZIC: Objection. It goes to  
22 his state of mind. It's not a relevant

1 question.

2 MS. POLIVY: It's not a state of  
3 mind. I'm asking if he knew whether or not  
4 there had been objections filed.

5 MR. DZIEDZIC: How can you ask him  
6 what he knew and not be asking about his state  
7 of mind? The issue here --

8 MS. POLIVY: What he knows is a fact.  
9 State of mind is what he thought.

10 MR. DZIEDZIC: What he knows is a  
11 fact, but it's not relevant.

12 MR. BLOCK: Yes. I think it's not  
13 relevant either.

14 MS. POLIVY: That's a most peculiar  
15 rendition. If it is relevant to ask if he  
16 asked about ex parte or he discussed ex parte,  
17 to say that it is not relevant to ask whether  
18 he was aware that they were contested  
19 applications is bizarre.

20 Are you directing him not to answer?

21 MR. DZIEDZIC: It's not a relevant  
22 question.

1 MS. POLIVY: You put in your  
2 objection.

3 MR. DZIEDZIC: I said, yes.

4 MS. POLIVY: Yes, what?

5 MR. DZIEDZIC: I'm directing him not  
6 to answer.

7 MS. POLIVY: Well, I think that we  
8 ought to call Mr. Chachkin up.

9 MR. BLOCK: Let me read into the  
10 record the first sentence of paragraph 11.

11 MR. COLE: Of what?

12 MR. BLOCK: Of the Commission's order  
13 setting up these depositions. It's the May 13  
14 -- released May 13, 1996, the order of the  
15 Commission. This is paragraph 11.

16 "As the ALJ director, the scope of  
17 such depositions should be strictly limited to  
18 the substance of any communications between the  
19 bureau staff and Rainbow or its representatives  
20 concerning the applicability and Rainbow's  
21 understanding of the applicability of the ex  
22 parte rules of this proceeding."

1 I believe your question goes to his  
2 understanding of the applicability.

3 MS. POLIVY: I'll rephrase.

4 MR. BLOCK: And therefore it's  
5 irrelevant.

6 MS. POLIVY: Thank you, Mr. Block.

7 BY MS. POLIVY:

8 Q Mr. Stewart, did you during the  
9 meeting or during any of the phone calls that  
10 you've described, at any time express to  
11 Rainbow or its counsel or to Toni Cook the fact  
12 that the Rainbow applications were contested?

13 A Did I express?

14 Q Yes. Did you say anything that would  
15 indicate to them that you were aware that the  
16 Rainbow applications were contested?

17 MR. DZIEDZIC: Objection to the last  
18 part of the question.

19 BY MS. POLIVY:

20 Q Will you answer the question, please?

21 MR. DZIEDZIC: No. I'm directing him  
22 not to answer. I think it's an unaskable

1 question.

2 MS. POLIVY: Then why are you playing  
3 games?

4 MR. EISEN: Bruce Eisen, representing  
5 Rainbow Broadcasting Company.

6 Could we read back the last part of  
7 that question, please?

8 MR. DZIEDZIC: The last part that  
9 pertained --

10 MR. EISEN: That was objected to.

11 MR. DZIEDZIC: Right.

12 (The reporter read the record as  
13 requested.)

14 MR. DZIEDZIC: Could you ask --

15 MS. POLIVY: Now, can you tell me  
16 what you object to?

17 MR. EISEN: Yes, what is the  
18 objection?

19 MS. POLIVY: What is the objection?

20 MR. DZIEDZIC: I think the question  
21 comes too close to going to his state of mind.

22 MS. POLIVY: I don't care whether it

1 comes too close. State the objection.

2 MR. DZIEDZIC: I already stated the  
3 objection.

4 MR. EISEN: It's not a question of  
5 state of mind -- Mr. Stewart's state of mind.  
6 It's a fact that relates possibly to Miss  
7 Polivy's state of mind.

8 MR. DZIEDZIC: Could you ask whether  
9 the question of the -- how about this?

10 MS. POLIVY: How about the question I  
11 asked?

12 MR. MOSKOWITZ: Chuck, it's  
13 describing what he expressed. It's describing  
14 his communication.

15 MR. DZIEDZIC: He has already  
16 testified to that. He has testified --

17 MS. POLIVY: No. He testified there  
18 was no discussion of ex parte.

19 MR. DZIEDZIC: Excuse me. Can I  
20 finish?

21 MS. POLIVY: No.

22 MR. DZIEDZIC: I can't finish?

1 MS. POLIVY: No, not if you're  
2 misstating what he said.

3 MR. EISEN: Let him explain it,  
4 please.

5 MS. POLIVY: Now, can you tell me why  
6 the question is objectionable?

7 MR. DZIEDZIC: The witness has  
8 already testified as to whether or not,  
9 pursuant to Mr. Cole's questions, there were  
10 any conversations either in telephone  
11 communications or the communications at the  
12 July 1 meeting.

13 MS. POLIVY: About ex parte?

14 MR. DZIEDZIC: About ex parte.

15 MR. MOSKOWITZ: That's not what she  
16 asked.

17 MS. POLIVY: I didn't ask that  
18 question.

19 MR. DZIEDZIC: You're asking the same  
20 question as to whether or not at that meeting  
21 the issue of the contested nature of the  
22 proceeding came up? Is that your question?

1 MS. POLIVY: I'm asking --

2 MR. DZIEDZIC: Whether or not it was  
3 contested?

4 MS. POLIVY: Read back the question,  
5 please.

6 (The reporter read the record as  
7 requested)

8 MS. POLIVY: You're drawing --

9 MR. DZIEDZIC: I think it goes beyond  
10 the scope of the --

11 MS. POLIVY: Perhaps.

12 MR. DZIEDZIC: Well, let me finish.

13 MS. POLIVY: The witness and counsel  
14 would like to discuss it.

15 MR. DZIEDZIC: I think the problem is  
16 the use of the term "contested."

17 MS. POLIVY: Well, that is a term  
18 that I will insist on.

19 MR. DZIEDZIC: I don't think that's  
20 pertinent.

21 MR. BLOCK: Can we go off the record  
22 a --



1 MS. POLIVY: No. Just a minute.

2 The Commission has said that Mr.  
3 Stewart and all of the other Commission  
4 witnesses may be questioned on the substance of  
5 any communications between the staff and  
6 Rainbow or its representatives concerning the  
7 applicability and Rainbow's understanding of  
8 the applicability of the ex parte.

9 Now, that goes directly to a material  
10 portion of that.

11 MR. DZIEDZIC: What goes to that?  
12 What aspect?

13 MS. POLIVY: My question.

14 MR. DZIEDZIC: What aspect of your  
15 question?

16 MS. POLIVY: The question itself.

17 Now, if we want to stand here and  
18 dance around, we will be here all day, because  
19 I will not --

20 MR. DZIEDZIC: Does your --

21 MS. POLIVY: -- concede that you're  
22 entitled to tell me that I cannot ask that

1 question.

2 MR. DZIEDZIC: I can't say anything  
3 to you about the questions you can ask. I can  
4 only advise my client on the questions I think  
5 he should answer.

6 MS. POLIVY: Well, are you advising  
7 him not to answer?

8 MR. DZIEDZIC: I've objected to the  
9 question, and I have so advised him.

10 MR. EISEN: Mr. Dziedzic, could you  
11 just read the first sentence? I know you're  
12 familiar with it. The first sentence of  
13 paragraph 11.

14 MR. DZIEDZIC: Can I ask you a  
15 question?

16 MR. EISEN: Please.

17 MR. DZIEDZIC: Is it your  
18 understanding that the phrase "contested  
19 application" implies that the ex parte rules  
20 are implicated?

21 MR. EISEN: It doesn't imply  
22 anything.

1 MS. POLIVY: It is a factual  
2 question.

3 MR. DZIEDZIC: The fact is to the  
4 contested nature of the proceeding?

5 MS. POLIVY: The legal conclusions  
6 that may be drawn from that are an entirely  
7 different matter. It is a question of fact.

8 MR. BLOCK: Let's go off the record  
9 for a second.

10 MR. DZIEDZIC: No.

11 MR. BLOCK: I want a private  
12 conversation with --

13 MS. POLIVY: He doesn't want to go  
14 off the record.

15 MR. DZIEDZIC: If you want to have a  
16 private conversation, that's different.

17 No, between counsel. That is  
18 certainly appropriate, I think.

19 MS. POLIVY: You're not representing  
20 -- you know, at this point, you don't control  
21 the deposition.

22 MR. EISEN: No, he said it's okay.

1 He just wants to have a private conference.

2 MS. POLIVY: Fine. Go off the  
3 record.

4 (Discussion off the record)

5 MS. POLIVY: I don't care. Either  
6 read it back on the record or off the record.  
7 I think by now everyone has totally forgotten  
8 what we're talking about.

9 (The reporter read the record as  
10 requested)

11 BY MS. POLIVY:

12 Q I'm going to rephrase the question.

13 Mr. Stewart, did you say anything  
14 during the meeting to the effect that the  
15 Rainbow applications were contested?

16 MR. DZIEDZIC: Note my objection.

17 THE WITNESS: Did I say anything to  
18 the effect that the Rainbow applications were  
19 contested?

20 MR. DZIEDZIC: And we're talking  
21 about the July 1 meeting?

22 BY MS. POLIVY:

1 Q Yes. There was only one meeting.

2 A Not specifically, no. I did  
3 indicate, though, that should you file a  
4 petition for reconsideration, I would suggest  
5 that you serve -- that you put service on that,  
6 and I think I have to say that.

7 I mean, because that's true, and I  
8 did say that, but I --

9 Q When you say that you put service on  
10 there, what --

11 A You serve the -- I forgot what the  
12 phrase was that I used, if it was the objector  
13 or the contestor or what, but that was at the  
14 end of the meeting. And I just made that  
15 reference when you indicated you were going to  
16 file a petition for reconsideration.

17 Q And did you name the objector? Or  
18 any representative of the objector?

19 A I don't remember doing that  
20 specifically.

21 Q During that meeting or in the course  
22 of the meeting, did Rainbow or its

1 representatives say anything about Press  
2 Broadcasting opposing Rainbow's applications?

3 A I don't recall that being done.

4 Q Do you recall how long the meeting  
5 lasted?

6 A Oh --

7 Q The July 1 meeting?

8 MR. DZIEDZIC: Objection. Objection.  
9 It doesn't go to the substance of the  
10 communications relating to ex parte rules.

11 But you can answer.

12 BY MS. POLIVY:

13 Q Answer the question.

14 A You know, I think probably about 15  
15 minutes -- it wasn't a very long meeting -- at  
16 the most, and I had other people waiting in my  
17 outside office for another meeting.

18 (Discussion off the record)

19 BY MS. POLIVY:

20 Q Mr. Stewart, subsequent to the  
21 meeting to your knowledge was any notation made  
22 of any ex parte contact regarding the meeting?

1 MR. DZIEDZIC: I object, but the  
2 witness can answer.

3 THE WITNESS: With respect to ex  
4 parte?

5 BY MS. POLIVY:

6 Q It's my understanding the  
7 Commission's procedures require if there's an  
8 ex parte contact, that a notation -- an oral ex  
9 parte contact, a notation be made to the file;  
10 is that correct?

11 MR. DZIEDZIC: Objection. I direct  
12 him not to answer that.

13 BY MS. POLIVY:

14 Q In any case, then, I'll repeat my  
15 last question, my previous question.

16 Are you aware of any ex parte  
17 notation that was made concerning the July 1  
18 meeting?

19 MR. DZIEDZIC: And I'm going to  
20 interrupt and apologize for doing so, but I  
21 object to the phrase "subsequent" and the use  
22 of the phrase "notation."

1 MS. POLIVY: Subsequent?

2 MR. DZIEDZIC: Well, a lot of things  
3 happened after that meeting, including an  
4 investigation by the Inspector General. Is  
5 this question designed to elicit information  
6 pertaining to notations made about the meeting  
7 immediately following that? Could you ask  
8 whether there were any --

9 BY MS. POLIVY:

10 Q Mr. Stewart, did you or any member of  
11 your staff that you are aware of make a memo to  
12 the file as required by the Commission's ex  
13 parte rules?

14 MR. COLE: Objection.

15 MR. DZIEDZIC: I object.

16 MR. SILBERMAN: That's objectionable.

17 BY MS. POLIVY:

18 Q Okay.

19 Mr. Stewart, is there a file into  
20 which ex parte contacts --

21 MR. DZIEDZIC: Objection.

22 BY MS. POLIVY:



1 Q -- are submitted?

2 MR. DZIEDZIC: Objection.

3 MR. SILBERMAN: That's objectionable.

4 MS. POLIVY: What?

5 MR. BLOCK: Outside the scope.

6 MR. SILBERMAN: Beyond the scope of  
7 the issue.

8 MS. POLIVY: If I can't ask him  
9 whether he made a notation if the substance of  
10 the communications -- now, look, we have the  
11 burden. There is an ex parte --

12 MR. BLOCK: Miss Polivy, let me just  
13 stop you right there for a second. You can  
14 continue after I make this clarification.

15 The reason why it's objectionable is  
16 not because the subject matter is not pertinent  
17 to your interest, but because the Commission  
18 has restricted this witness to testify only  
19 about what he told you and what you told him.

20 You're asking about something he  
21 wrote down afterwards. That is why it's  
22 objectionable. You can have discovery about